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U.S. DISTRICT COURT  
DISTRICT OF MASS.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FREDERIC BERTHOFF, )  
Petitioner, )  
v. ) CIVIL ACTION NO. 04-10170-WGY  
UNITED STATES OF AMERICA, )  
Respondent. )

**FREDERIC BERTHOFF'S OPPOSITION TO  
THE GOVERNMENT'S MOTION TO DISMISS**

Petitioner Frederic Berthoff ("Berthoff"), in the above-numbered Action and through Counsel, hereby opposes the Government's **Motion to Dismiss Berthoff's Successive Section 2255 Motion.**

In so doing, he relies upon his **Frederic Berthoff's Omnibus Petition for Relief and Request for Hearing**, its fact assertions, attached Exhibits, and the arguments made therein. Further, Berthoff objects to the Government's attempt to procedurally, and exclusively, minimize the import of his arguments by characterizing them as a "Successive Section 2255 Petition." Berthoff's position is that his request for relief – insofar as it claims a right to *Habeas*

*Corpus* under 28 U.S.C. §2255 – is an original Petition, not successive. But even if it were a successive petition, a point which Berthoff most certainly does not concede, the Petition presents separate grounds for relief, not dependent on the ordinal characterization of its §2255 claims, which require adjudication.

Berthoff says that his Petition is legally and factually worthy of determination on its merits, and therefore asks that this Honorable Court deny the Government's request for procedural relief.

Respectfully submitted,

FREDERIC BERTHOFF,  
By Counsel:



MARTIN D. BOUDREAU  
487 Adams Street  
Milton, Massachusetts 02186  
(617) 698-2240

DATED: April 27, 2004

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**CERTIFICATE OF SERVICE**

I, Martin D. Boudreau, Counsel to Petitioner Frederic Berthoff in the foregoing-captioned matter, certify that I have served a copy of the within **Frederic Berthoff's Opposition to the Government's Motion to Dismiss** upon the Government by mailing same, first class postage prepaid, to

Kevin O'Regan, AUSA  
United States Attorney's Field Office  
Federal Building & Courthouse, Room 310  
1550 Main Street  
Springfield, Massachusetts 01103,

this 27<sup>th</sup> day of April, 2004:



MARTIN D. BOUDREAU